The defendants shall also pay the taxed costs of this suit.

I shall give my decision on interest on Saturday, 19th August, 1972.

Suffian F.J. (delivering further judgment on August 19, 1972): When I delivered judgment on 10th August, 1972, I was told for the first time that the defendants had on 25th November, 1969, paid into court $4,500 in full settlement of the plaintiff's claim as it then stood, and Mr. V. P. Nathan on behalf of the defendants submitted that no interest should be awarded on (a) that amount, nor on (b) the special damages of $5,443.55 awarded in respect of earnings actually lost between the plaintiff's retirement and the date of the trial, because this amount was not claimed by the plaintiff in his pleadings until the amendment on 1st June, 1972, with leave granted on 1st May, 1972, of his statement of claim.

It would appear that by his original pleadings the plaintiff claimed only special damages, and claimed only general damages for pain and suffering and that he made no claim in respect of salaries lost between the date of his retirement and the date of the trial nor in respect of loss of future earnings, and Mr. Nathan told me that that was why the defendants paid into court only $4,500.

On behalf of the plaintiff Mr. Inderjit Singh submitted that interest should be awarded on both amounts.

He said that interest should be awarded on the $10,000 general damages ordered to be paid in respect of the plaintiff's pain and suffering, because the defendants had paid into court only $4,500.

As regards interest on the special damages of $5,443.55 Mr. Inderjit Singh said that when the suit was first filed on 29th April, 1969, there was no claim for damages in respect of actual loss of salaries nor in respect of loss of future earnings because the plaintiff was then still in the Police Force, that the statement of claim was amended to include these damages after the plaintiff had been forced to retire from the Force, that after the amendment the defendants could have paid a further sum to cover these claims but failed to do so, and that therefore the defendants should pay interest on the sum awarded in respect of salaries actually lost and in respect of loss of future earnings.

The principles on which interest should be awarded are clearly set out by Lord Denning M.R. in *Jefford & Another* v. *Gee*;[6] and briefly they are these, that —

(a) interest should not be awarded as compensation for the damages done, and

(b) it should only be awarded to a plaintiff for being kept out of money which ought to have been paid to him.

Lord Denning then explained the detailed working of these principles under various heads. Please see [1970] 1 M.L.J. xli.

As regards the $10,000 general damages awarded in respect of the plaintiff's pain and suffering and loss of amenities, interest should be awarded from the time when the defendants ought to have paid it, but did not: for it is only from that time that the plaintiff can be said to have been kept out of the money. Normally interest should run from the date of the service of the writ.

The plaintiff's original pleadings covered a claim under this head. To meet that claim the defendants paid into court the sum of $4,500. I am of the opinion that the plaintiff should have received $10,000. I therefore order that the defendants should pay interest at 6% per annum on $10,000 from the date of the service of the writ until judgment.

As regards the $5,443.55 special damages awarded in respect of earnings actually lost between the plaintiff's retirement and the date of the trial, here again interest should run from the time when the defendants ought to have paid it, but did not, for until then the plaintiff cannot be said to have been kept out of the money. I am of the opinion that the defendants ought to have paid this not on the date of the service of the writ (the plaintiff's claim did not then cover this head of damage) but on the date of the amendment (when the defendants first knew of the claim and ought therefore to have paid the plaintiff). Accordingly I order that the defendants pay interest on this amount ($5,443.55) from the date of the amendment to the date of judgment, and as regards the rate I am of the opinion that in the circumstances of this case 6% would be more just than 3% per annum and I order accordingly.

There shall be no interest on the other two heads of damage — not on the agreed special damages of $750 because Mr. Inderjit Singh on the plaintiff's behalf disclaimed interest, the amount involved being (he said) small; nor on the general damages of $27,500 awarded for loss of future earnings, because the plaintiff has not been kept out of this money (on the contrary he will receive it in advance).

The amount ($4,500) paid into court on 25th November, 1969, is ordered to be paid to the plaintiff.

Order accordingly.

Solicitors: *Inderjit Singh; Richard Talalla & Co.*

MENAKA v. NG SIEW SAN

[O.C.J. (Mohamad Azmi J.) August 12, 1972]

[Kuala Lumpur — Originating Summons No. 59 of 1971]

Contract — Moneylenders — Moneylender lending money in other than authorised name — Whether transaction void for illegality — Whether transaction unenforceable — Whether court can grant ancillary relief and order restitution of money — Contracts (Malay States) Ordinance, 1950, s. 66 — Moneylenders Ordinance, 1951, s. 8(b) & (c).

The applicant and another person were licenced as moneylenders under the authorised name of "A.R. PR.M. Firm". The applicant lent to the respondent a sum of money and the respondent charged his land to the applicant as security for the loan. Both the memorandum of loan and the charge were executed by the attorney of the applicant. The respondent having failed to pay the principal sum and interest due the applicant applied for an order to sell the

land to satisfy the amount due. The respondent opposed the applicant contending that the claim was illegal and void and/or unenforceable on the ground that the applicant had contravened the provisions of the Moneylenders Ordinances, 1951. In her affidavit in reply the applicant contended that even if the respondent succeeded in his counterclaim the respondent having received from the applicant the sum of money was bound to restore it to the applicant.

Held: (1) as the applicant had contravened the provisions of sections 8(b) and 8(c) of the Moneylenders Ordinance, the transaction of loan was illegal and void;

(2) non-compliance with either section 8(b) or 8(c) of the Moneylenders Ordinance renders a moneylending transaction illegal and void, but it does not make the transaction statutorily unenforceable;

(3) as both the parties in this case were not aware and were genuinely ignorant of the illegality at the time of making the loan transaction, the applicant was entitled to relief under section 66 of the Contracts (Malay States) Ordinance.

Cases referred to:-

(1) *Kehar Singh* v. *Karuppiah* [1964] M.L.J. 249.

(2) *Reading Trust Ltd.* v. *Spero* [1930] 1 K.B. 492.

(3) *Ahmad bin Udoh and another* v. *Ng Aik Chong* [1970] 1 M.L.J. 82.

(4) *Harnath Kaur* v. *Inder Bahador Singh* 50 I.A. 69.

(5) *Snell* v. *Unity Finance Ltd.* [1963] 3 All E.R. 50.

(6) *Kanuri Sivaramakrishnaiah* v. *Venuri Venkata Narahari Rao* A.I.R. 1960 And. Pra. 186.

(7) *Kasumu & Ors.* v. *Baba-Egbe* [1956] 3 All E.R. 266.

(8) *Govind Singh* v. *Vali Mohammad* A.I.R. 1951 Hyd. 44.

ORIGINATING SUMMONS.

V. L. Kandan for the applicant.

M. Segaram for the respondent.

Mohamed Azmi J.: By a Charge Presentation No. 167/65, Volume 204 Folio 94, dated January 11, 1965, the respondent charged to the applicant six pieces of land in the Township of Tanjong Malim totalling an area of 3 roods 25.52 poles as security for a loan of $20,000 with interest at 12% per annum. The respondent covenanted with the applicant as chargee, *inter alia,* to repay the principal sum of $20,000 on demand, and to pay the agreed interest by equal monthly payment of $200 on the eleventh day of every month, the first of such payment to be made on February 11, 1965. By August 28, 1969 the respondent had only made two payments towards interest totalling $600. On October 3, 1970, the applicant caused a notice in Form 16E to be served on the respondent under section 255 of the National Land Code. The respondent having failed to pay the principal sum and interest due within one month of the service of the notice, the applicant applies by originating summons for an order to sell the six parcels of land by public auction to satisfy the principal sum of $20,000 with interest thereon at the rate of 12% per annum from April 11, 1965 to date of payment and costs. The respondent opposes the application contending that the claim is illegal and void and/or unenforceable on the grounds that the applicant has contravened the provisions of sections 8, 16, 18, 19 and 21 of the Moneylenders Ordinance No. 42 of 1951. He also counterclaims for an order that the contract of loan and the charge dated January 11, 1965 executed by him in favour of the applicant be declared illegal and void and/or unenforceable and for other ancillary reliefs. By her affidavit in reply, the applicant contends that, even if the respondent succeeds in his counterclaim, the respondent having received from the applicant $20,000 not intended to be given gratuitously and that the respondent having enjoyed the benefit thereof, is bound to restore the same to the applicant.

By consent of both parties, it was ordered by Abdul Hamid J. that the foreclosure proceedings be continued as if the action had been commenced by writ of summons. In consequence thereof, for the purpose of the present proceedings, the affidavit in support of the originating summons sworn on February 13, 1971 by N.AR.K. Nachiappa Chettiar, an attorney of the applicant, is treated as a statement of claim, and the amended affidavit of the respondent affirmed on February 8, 1972 as a defence and counterclaim; whilst the affidavit in reply of N.AR.K. Nachiappa Chettiar sworn on June 21, 1971 stands as a reply and a defence to respondent's counterclaim.

At the outset of the hearing, the respondent abandoned his defence set up under sections 16, 18, 19 and 21(1) of the Moneylenders Ordinance as contained in paragraphs 11(a), 13, 14, 15 and 15A of the statement of defence. As far as the applicant's claim is concerned, it is also agreed by both parties that there are only three issues which require determination by the court, namely: —

(i) whether the applicant has complied with section 8(b) of the Moneylenders Ordinance;

(ii) whether the applicant has complied with section 8(c) of the said Ordinance; and

(iii) whether the two contractual terms in the charge as pleaded in paragraph 11(b) of the statement of defence, should have been included in the memorandum of loan, and, if they are not so included, whether such omission would amount to non-compliance with the provision of section 16(3) of the Moneylenders Ordinance.

As regards issues (i) and (ii), the relevant part of section 8 of the Moneylenders Ordinance provides:

"If any person —

(a) ....;

(b) carries on business as a moneylender without holding a licence or, being licensed as a moneylender, carries on business as such in any name other than his authorized name or at any other place than his authorized address or addresses; or

(c) in the course of business as a moneylender enters as principal or agent into any agreement with respect to any advance or repayment of money or takes any security for money otherwise than in his authorized name,

he shall be guilty of an offence under this Ordinance and shall be liable to a fine not exceeding one thousand dollars and for a second or subsequent offence shall be liable to the fine aforesaid or to imprisonment for a term not exceeding twelve months and an offender being a company shall for a second or subsequent offence be liable to a fine not exceeding five thousand dollars."

In this case, the following facts are not in dispute. At all relevant times, the applicant and one AL. Chockalingam are licensed as partners to carry on business as moneylenders under the authorised name of "AR.PR.M. Firm" and at the authorised address of No. 30, Leboh Ampang, Kuala Lumpur. On January

11, 1965 pursuant to a note of memorandum of loan of that date, the applicant lent to the respondent a sum of $20,000 with interest thereon at the rate of 12% per annum. By a memorandum of charge of the same date, the respondent charged his six pieces of land to the applicant as security for the said loan. Both the memorandum of loan and the charge were executed by one Manickam Chettiar as the attorney of the applicant. At all relevant times, Manickam Chettiar was licensed to carry on business of moneylending as an agent of AR.PR.M. Firm under the authorised name of that firm. Thus, by executing the note of memorandum and the memorandum of charge otherwise than in the authorised name of "AR.PR.M. Firm", Manickam Chettiar has contravened the penal provisions of sections 8(b) and 8(c) of the Ordinance. Similarly, since the applicant has entered into the loan transaction and the charge in her name personally instead of in the authorised name of "AR.PR.M. Firm", she has also contravened both the said penal provisions. In his oral submission, learned counsel for the applicant has now conceded that sections 8(b) and 8(c) have not been complied with. Under the circumstances, the secured on demand loan in this case is illegal and void, and the applicant is liable to the penalty imposed under section 8.

With regard to issue (iii), it is clear from the exhibit that the note of memorandum under section 16 did not contain the third and fourth contractual terms found in the memorandum of charge. Under the third term, the respondent undertakes that he will not transfer, sell, charge or otherwise deal with the said land without the written consent of the applicant/chargee being first obtained, and under the fourth term, it is provided that the applicant/chargee shall have the custody or possession of the issue document of title of loan charged. In this case, the respondent testifies that he was only supplied with a copy of the note of memorandum but not with a copy of the memorandum of charge. However, learned counsel for the respondent has now agreed that the memorandum of charge appeared to have been received by the respondent. The respondent was represented by a solicitor during the whole transaction. If he had been supplied with a copy of the note of memorandum, I find it very unlikely on the balance of probabilities that his solicitor would not ensure that he was also given a copy of the charge. I am therefore satisfied that the respondent was in fact supplied with the stamped copy of the charge as well as the stamped copy of the note of memorandum; and, as such, on the authority of *Kehar Singh* v. *Karuppiah*[1] and *Reading Trust, Limited* v. *Spero*[2] both memoranda can be read together so as to constitute sufficient compliance with the provision of section 16(3). Under the circumstances, the omission to incorporate the two onerous terms in the charge is not, therefore, fatal.

On the relief sought by the applicant in her reply to the respondent's counterclaim, the question to be determined is whether the applicant is entitled to the restoration of her money still due from the respondent under the provision of section 66 of the Constracts (Malay States) Ordinance, 1950 by virtue of the moneylending transaction being void for illegality under sections 8(b) and 8(c) of the Moneylenders Ordinance. In other words, ought the court grant the declaration and ancillary reliefs to the respondent by putting him on terms? Section 66 provides:

"When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it, to the person from whom he received it."

Before dealing with the applicability of section 66 to the present case, it is necessary to consider the effect of violating the penal provisions of sections 8(b) and 8(c) on a moneylending transaction. Learned counsel for the applicant contends that the effect of such violation renders the transaction illegal and void but not unenforceable. It is argued that there is a difference between provisions in the Moneylenders Ordinance which expressly make a contract unenforceable in case of non-compliance and those which are silent as regards enforceability. Thus, unlike, for example, sections 16 and 18, the provision of section 8 does not expressly state that a contract or security is unenforceable if a person being licensed as a moneylender carries on such business in any name other than his authorised name, or if he enters into any agreement with respect to any advance or repayment of money, or takes any security for money otherwise than in his authorised name. In my judgment, there is some force in this argument, and I am inclined to the view that non-compliance with either section 8(b) or 8(c) renders a moneylending transaction illegal and void, but it does not make the transaction statutorily unenforceable. It is contended that the distinction is important in that where an agreement or a contract is unenforceable by statute, the remedy under section 66 of the Contracts (Malay States) Ordinance will not be available.

To my mind, the real issue to be decided is not so much whether or not the transaction is statutorily unenforceable, but whether it is void *ab initio* by reason of illegality under sections 8(b) and 8(c). This depends on whether at the time of making the agreement the parties were ignorant that they were executing an illegal transaction. If they were ignorant, then, in my view, section 66 of the Contracts (Malay States) Ordinance would apply. (See *Ahmad Bin Udoh & Anor.* v. *Ng Aik Chong*[3]). As was stated by their Lordships of the Privy Council in *Harnath Kaur* v. *Inder Bahador Singh*[4]:

"An agreement, therefore, discovered to be void is one discovered to be not enforceable by law, and, on the language of the section, would include an agreement that was void in that sense from its inception as distinct from a contract that becomes void."

The circumstances of the present case are well summarised by the following evidence of the respondent:

"I agree that I borrowed the money and still owing $20,000 principal and interest, but I refuse to pay because there is violation of legislation. I was not aware of the violation until I filed my affidavit."

From the evidence in this case, it is beyond dispute that the fact of non-compliance with sections 8(b) and 8(c) was only discovered by both parties when the statement of defence dated February 8, 1972 was filed. This is supported by the offer made by Sulai-

man Alias & Co., who at one stage acted as solicitors for the respondent to settle the debt and interest by a certain date as contained in their letters dated November 4, 1970 and November 26, 1970 and the refusal of the applicant to accept the offer. It is my finding in this case that at all relevant times both parties had no knowledge of the illegality until the statement of defence was filed. Nor is there evidence on which such knowledge can be imputed on either of them. The cheque of $20,000 was issued in the authorised name of AR.PR.M. Frm and so were the two receipts of $600 issued to the respondent in respect of payments made towards interest. It would also appear that this is not the first time that the respondent had borrowed money from the firm. From the evidence, it is reasonble to infer that the respondent knew all along that the loan was given by AR.PR.M. Firm and that the applicant was merely acting as managing partner of the firm. It is only years later that the transaction was discovered to have been entered in the wrong name. On the evidence, I find this case comes within the first limb of section 66, *i.e.* the agreement "is discovered to be void". This is not a case where the consideration or object of the agreement is illegal and void for that reason. Nor is the agreement tainted with fraud or other moral turpitude as for instance happened in the case of *Snell* v. *Unity Finance, Ltd.*[5] where the plaintiff/hire-purchaser in order to avoid the requirement of a minimum deposit by the Hire-Purchase and Credit Sale Agreements (Control) Order, 1960 stated in the agreement the cash price of the car as £210 and the deposit as £50 instead of the true amounts of £185 and £25, which last sum was less than the minimum deposit required by the Order. The Court of Appeal refused to enforce the hire-purchase agreement.

In *Ahmad bin Udoh's* case, Suffian F.J. quoted with approval the following passage from the judgment of Chandra Reddy C.J. in *Kanuri Sivaramakrishnaiah* v. *Vemuri Venkata Narahari Rao*[6] on the question of section 65 of the Indian Contract Act (corresponding to our section 66) relating to an executed contract:

> "It is manifest that in order to invoke this section, the invalidity of the contract or agreement should be discovered subsequent to the making of it. This cannot be taken advantage of by parties who knew from the beginning the illegality thereof. It only applies to a case where one of the parties enters into an agreement under the belief that it was a legal agreement, *i.e.*, without the knowledge that the agreement is forbidden by law or opposed to public policy and as such illegal.
>
> The effect of section 65 is that, in such a situation, it enables a person not in *pari delicto* to claim restoration since it is not based on an illegal contract but dissociated from it. That is permissible by reason of the section because the action is not founded on dealings which are contaminated by illegality. The party is only seeking to be restored to the status *quo ante*."

Learned counsel for the respondent relied on the case of *Kasumu & Ors.* v. *Baba-Egbe*[7] and *Govind Singh* v. *Vali Mohammad*[8] for the proposition that section 66 of the Contracts Ordinance cannot apply to the Moneylenders Ordinance. As regards *Kasumu's* case, I do not think that is what their Lordships of the Privy Council decided in that case. There it was found that the moneylender had contravened section 19 of the Nigerian Money Lenders Ordinance which imposes a duty on a moneylender to keep proper account books — which is similar to our section 18. As stated earlier on, our section 18 of the Moneylenders Ordinance expressly makes a contract unenforceable if it is not complied with. But in the instant case, we are not dealing with section 18; and in any event, the effect of section 66 of our Contracts Ordinance was not argued before the Privy Council in that case. With regard to the case of *Govind Singh* v. *Vali Mohammad*, the moneylender there knew that he was entering into an illegal contract and, as such, it was rightly held that section 65 of the Indian Contract Act could not apply.

As both parties in this case were not aware and were genuinely ignorant of the illegality at the time of making the loan transaction, the applicant is entitled to relief under section 66. Under the circumstances of the present case, I do not think it is reasonable that the respondent who has had the benefit and advantage of using $20,000 of the applicant's money and who is now relying on the illegality of the loan transaction and counterclaiming, *inter alia*, for the return and cancellation of the note of memorandum and the memorandum of charge, should have reliefs, notwithstanding such illegality, without being put on terms by which both parties may be restored to the positions they occupied before the transaction commenced. For the same reason, the applicant should not also be allowed to keep the $600 paid to her as interest. I would therefore make the following orders: —

(1) the applicant's claim for an order of foreclosure of the respondent's six parcels of land is dismissed;

(2) upon payment of the sum of $19,400 by the respondent to the applicant within two months from today —

  (i) it is declared that the contract of loan dated January 11, 1965 entered into between the respondent and the applicant and the Charge Presentation No. 167/65 Volume 204 Folio 94 dated January 11, 1965 executed by the respondent in favour of the applicant is illegal and void; and

  (ii) it is ordered that —

    (a) the Registrar of Title do cancel the memorials appearing on the issue document of title and on the Register of Documents of Title to lands charged by the respondent in favour of the applicant as security for loan dated January 11, 1965;

    (b) the chargee/applicant do deliver up the note or memorandum for cancellation;

    (c) the chargee/applicant do within fourteen days from the date of payment deliver to the chargor/respondent or his solicitors the duplicate copy of the memorandum of the charge and issue documents of title relating to the aforesaid lands;

    (d) the chargee/applicant do within fourteen days from the date of payment execute a good and valid registrable memorandum of discharge, discharging the Charge Presentation No. 167/65 Volume 204, Folio

94 dated January 11, 1965 and deliver the same to the chargor/respondent or his solicitors; and that failing the same, the Senior Assistant Registrar, High Court, Kuala Lumpur, be empowered to execute the said memorandum of discharge for and on behalf of the said chargee/applicant;

(3) there will be no order as to costs.

Order accordingly.

Solicitors: *Shearn, Delamore & Co.; Segaram & Co.*

RAMLI BIN SALLEH v. INSPECTOR YAHYA BIN HASHIM

[O.Cr.J. (Syed Agil Barakbah J.) August 19, 1972]

[Alor Star — Originating Motion No. 18 of 1972]

Constitutional Law — Right to consult legal practitioner by person arrested — Whether right commences immediately after arrest or within a reasonable time before police investigation is completed — Criminal Procedure Code (Cap. 6), ss. 28, 117 and 255 — Federal Constitution, art. 5.

In this case the applicant had been arrested by the police on the strength of a report of theft. After being produced before a magistrate he was remanded for a period of eleven days in police custody. An application was made by an advocate and solicitor who had been appointed to act for the applicant, for an opportunity to see the prisoner for consultation. This was refused and the respondent stated that the advocate and solicitor could see the applicant after the completion of the remand period. An application was thereupon made for *habeas corpus* but before the matter was brought to court the applicant had been released. The learned judge held that the question which arose in the case was of considerable importance and public interest and that it was proper for him to make a ruling thereon. The question was whether the right of a person who is arrested and remanded in police custody to consult and be defended by a legal practitioner of his own choice commences immediately after arrest or within a reasonable time before police investigation is completed.

Held: (1) the right of a person who is arrested and remanded in police custody, to consult and be defended by a legal practitioner of his own choice as envisaged in article 5(3) of the Constitution begins right from the day of his arrest even though police investigation has not yet been completed;

(2) in order to satisfy the constitutional requirement of article 5(1) of the Constitution that right should be subject to certain legitimate restrictions which necessarily arise in the course of police investigation, the main object being to ensure a proper and speedy trial in the court of law;

(3) such restrictions may relate to time and convenience of both the police and the person seeking the interview and should not be subject to any abuse by either party;

(4) in order to render such interview effective it should be held not within the hearing of any member of the police though within their sight;

(5) the action of the respondent in this case in restricting the learned counsel's application to interview his client on the expiry of the detention period was unreasonable;

(6) the police should not in any way delay or obstruct such interviews on arbitrary or fanciful grounds with a view to deprive the accused of his fundamental right.

[Editorial Note: The learned judge in this case after making the ruling referred the matter for the opinion of the Federal Court under section 48 of the Courts of Judicature Act, 1964. The Federal Court (Federal Court Special Case No. 1 of 1972, Ong C.J., Suffian, Gill, Ali and Ong Hock Sim F.JJ.) on October 2, 1972, unanimously refused to give an opinion, saying that the Federal Court under section 48 had no jurisdiction to determine abstract matters or matters of academic interest such as disclosed in the reference. Suffian F.J. thought that the learned judge when making the ruling, was already *functus officio* and that he should not have made it. Ong Hock Sim F.J. considered that as the prisoner was already released, the ruling was uncalled for as the matter had become purely an academic exercise. No written judgment of the Federal Court was delivered.

The refusal of the Federal Court to deal with the reference renders the guide-line enunciated by the learned judge merely *obiter*. Reference may be made to the article on "Right of an Arrested person to Consult Counsel" by Tan Sri Mohamed Salleh Abas ([1972] 2 M.L.J. lxiii) and the article "When does the Right of an Arrested Person to Consult Counsel under article 5(3) of the Federal Constitution Begin?" by Karpal Singh, to be published in the next issue of the *M.L.J.*]

Cases referred to:-

(1) *Lee Mau Seng* v. *Minister of Home Affairs Singapore* [1971] 2 M.L.J. 137.

(2) *Moti Bai* v. *The State* A.I.R. 1954 Rajasthan 241.

(3) *In re Llevelyu Evans* A.I.R. 1926 Bonn. 551.

(4) *Sunder Singh* v. *Emperor* A.I.R. 1930 Lahore 945.

(5) *Assa Singh* v. *Menteri Besar, Johore* [1967] 2 M.L.J. 30.

ORIGINATING MOTION.

Karpal Singh for the applicant.

Datuk Tunku Mokhtar (Legal Adviser) for the respondent.

Syed Agil Barakbah J. (delivering his ruling): This is an application for a writ of *habeas corpus* at the instance of the applicant, the father-in-law of the prisoner. The prisoner was arrested on August 8, 1972, by the police on the strength of a report regarding the theft of an electric engine. He was produced within twenty-four hours before a magistrate who ordered that he be remanded for a period of eleven days under section 117 of the Criminal Procedure Code (F.M.S. Cap. 6) on being satisfied that investigation would not be completed within twenty-four hours. On August 9, 1972, an application was made by Mr. Karpal Singh, an advocate and solicitor, who had been approached by the applicant to act for the prisoner, for an opportunity to see the prisoner for consultation as soon as possible. The respondent replied that he could see the prisoner on August 19, *i.e.* after the completion of the remand period. Thus, from the day of arrest until the completion of the remand period the prisoner would not be given the opportunity of consulting his counsel.

When the application came before me Mr. Karpal Singh informed the court that the prisoner had been released, but owing to the importance of the issue raised, and the absence of any ruling on it, he requested me to hear his argument and make a ruling thereon. The Legal Adviser, Datuk Tunku Mukhtar, who appeared for the respondent, replied that since the prisoner had been released the application for *habeas corpus* no longer arose and therefore it was not necessary for the court to consider the application.

To my mind, the question that has to be decided is one of considerable importance and of public interest